

REMARKS

In the September 12, 2003 Office Action, the Examiner asserted that claims 1-15 were pending in the application; objected to claims 1 and 15; rejected claims 1-14 under the second paragraph of 35 U.S.C. § 112; objected to claim 1 under 37 C.F.R. § 1.75; and rejected claims 1-15 under 35 U.S.C. § 102(e). In rejecting the claims, U.S. Patent 6,295,449 to Westerlage et al. (Reference A) was cited.

As the Examiner was informed by telephone on December 12, 2003, claims 1-15 were not pending on September 12, 2003. Submitted herewith is a copy of a Preliminary Amendment and a postcard receipt indicating that the Preliminary Amendment was received by the U.S. Patent and Trademark Office on October 1, 2001. As indicated in the Preliminary Amendment, claims 1-15 were cancelled and replaced with claims 16-31. Therefore, it is submitted that the applicant is under no duty to respond to the September 12, 2003 Office Action and upon being informed that the September 12, 2003 Office Action did not examine the pending claims, the Examiner should have withdrawn the Office Action and issued a new Office Action addressing the pending claims. However, since the Examiner indicated that the September 12, 2003 Office Action would not be withdrawn, this Amendment is being submitted to address any of the objections and rejections that are applicable to the pending claims.

Objections and Rejections under 35 U.S.C. § 112

With respect to the objections to claims 1 and 15 and the rejection of claims 1-14 under the second paragraph of 35 U.S.C. § 112, since none of these claims were pending on September 12, 2003, no response is required. However, it is submitted that the punctuation and English used in the pending claims is proper and none of the terms lacking antecedent basis, or the characters "[lacuna]" exist in the pending claims. Therefore, withdrawal of the objection and the rejection under the second paragraph of 35 U.S.C. § 112 is respectfully requested.

Double Patenting under 37 C.F.R. § 1.75

In item 4 on page 3 of the Office Action, the Examiner objected to claim 1 under 37 C.F.R. § 1.75 as a substantial duplicate of claim 15. However, claim 1 in the English translation of the international application was an apparatus claim, while claim 15 was a method claim. Similarly, pending claim 16 is an apparatus claim, while pending claim 31 is a method claim. It is submitted that 37 C.F.R. § 1.75 does not apply to claims of different type, such as apparatus and method claims, even if the words used are similar. If this objection is repeated for claims 16 and

31, the Examiner is respectfully requested to cite support in case law for objecting to apparatus and method claims in this manner.

Rejections under 35 U.S.C. § 102

In item 6 on pages 3-7, claims 1-15 were rejected under 35 U.S.C. § 102(e) as anticipated by Westerlage et al. Since the pending claims were not examined, it is submitted that no response is required. However, it is noted that the rejection of claim 12 set forth in the last paragraph on page 6 of the Office Action cited reference numeral 372 in Fig. 12 as disclosing "a control and monitoring system ... which is also intended for direct control of operating modes of a vehicle which is coupled to the apparatus via control signals" (Office Action, page 6, last three lines). In Westerlage et al., numeral 372 in Fig. 12 is labeled "DISPLAY" and is described as being used to display "a map with location identification of each communication unit associated with a central host" (column 25, lines 31-33) and more generally, "[d]ata transmitted to and received from communication units" (column 25, lines 8-9) which may "include particular messages, such as changes in delivery schedules, weather conditions, or the like" (column 25, lines 16-18). Clearly, such a display does not meet the limitations recited by claim 12 in the English translation of the international application

If the Examiner intended to cite the central hosts 226 and 228, rather than display 372, as corresponding to the control and monitoring system recited in claims 12, nothing has been found to suggest that the central host in the system taught by Westerlage et al. performs the operations of "directly controlling operational states of a device" (claim 16, lines 3-4) as recited in amended claim 16. In the system taught by Westerlage et al. the central hosts are apparently stationary communication nodes that are used by truck dispatchers to communicate with vehicles, "for a graphical display of the route of a truck over time and the calculation of estimated times of arrivals and other travel statistics by dispatchers at central hosts" (column 25, lines 54-56). No suggestion has been found of using the system taught by Westerlage et al. for "controlling operational states of a device, coupled to said apparatus, via control signals" (claim 16, lines 3-4). Since claims 17-30 depend from claim 16, it is submitted that claims 16-30 patentably distinguish over Westerlage et al.

Summary

It is submitted that Westerlage et al. does not teach or suggest the features of the present claimed invention. Thus, it is submitted that claims 16-30 are in a condition suitable for

allowance. Reconsideration of the claims and an early Notice of Allowance are earnestly solicited.

If any formal matters remain, the Examiner is respectfully requested to contact the undersigned by telephone to expedite the resolution of such matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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